

AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 457

Introduced by Senator Wolk

February 26, 2009

An act to add Sections 29735.5 and 29759 to, and to add Division 17.5 (commencing with Section 27000) to, the Public Resources Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as amended, Wolk. Sacramento-San Joaquin Delta.

Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the 23-member Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta. That act establishes a primary zone where further development is barred and a secondary zone surrounding the Delta where development may proceed under certain conditions.

The California Bay-Delta Authority Act establishes in the Natural Resources Agency the California Bay-Delta Authority. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would create a 9-member Delta Stewardship Council in the Natural Resources Agency with specified powers and responsibilities relating to the Delta, including approving the Delta Stewardship Plan to guide and shape management of the Delta. The bill would require the commission to present the council with a draft plan on or before October 1, 2010. The bill would require the council to adopt the plan on or before January 1, 2011. The bill would require the council to review, and if necessary, amend the plan at least every 5 years.

The bill would require the council by March 1, 2010, to appoint a Delta Science and Engineering Board and create a Delta Science and Engineering Program. The bill would state the intent of the Legislature that the Delta Science and Engineering Program be a replacement for, and a successor to, the CALFED Science Program, with specified responsibilities, and that the Delta Science and Engineering Board be a replacement for the CALFED Independent Science Board.

The bill would require the commission to require all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with the Delta Stewardship Plan, thereby imposing a state-mandated local program on cities and counties. The bill would require the commission to revise all of its plans and policies to be consistent with the Delta Stewardship Plan, to review and certify all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan, to exercise ~~direct consistency determination authority over development proposals~~ *appeal authority over actions taken by a local government or other local agency* in the primary zone, to review, hold public hearings and receive testimony, and provide recommendations to the council on all proposed projects subject to approval by the council, and develop a regional economic development plan. The bill would require the council to determine appeals from the commission on water conveyance and storage project decisions.

The bill would create the Delta Stewardship Fund and would require the commission to deposit in the fund any moneys received from federal, state, local, and private sources for Delta stewardship. Moneys in the fund would be available, upon appropriation, for regional economic development consistent with the Delta Stewardship Plan.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 17.5 (commencing with Section 27000)
2 is added to the Public Resources Code, to read:

3
4 DIVISION 17.5. DELTA GOVERNANCE

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6 CHAPTER 1. GENERAL PROVISIONS

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8 27000. The Legislature finds and declares that the
9 Sacramento-San Joaquin Delta is a natural resource of statewide,
10 national, and international significance, containing irreplaceable
11 resources, and it is the policy of the state to recognize, preserve,
12 and protect those resources of the Delta for the use and enjoyment
13 of current and future generations. In implementing that policy, the
14 state shall act pursuant to all of the following principles:

15 (a) The revitalization of the Delta ecosystem and a reliable water
16 supply for California are the primary goals for sustainable
17 management of the Delta, which is a unique and valued area,
18 warranting recognition and special legal status from the state.

19 (b) The Delta ecosystem must function as an integral part of a
20 healthy estuary.

21 (c) California's water supply is limited and must be managed
22 with significantly higher efficiency to be adequate for the state's
23 future population, growing economy, and vital environment.

24 (d) The foundation for policymaking regarding California water
25 resources must be the longstanding principles of "reasonable use"
26 and "public trust"; these principles are particularly important and
27 applicable to the Delta. The goals of conservation, efficiency, and
28 sustainable use must drive state water policies.

29 (e) A revitalized Delta ecosystem will require reduced diversions
30 of water, or changes in patterns and timing of those diversions

1 upstream of the Delta, within the Delta, and exported from the
2 Delta, at critical times.

3 (f) Major investments in the Delta and the statewide water
4 management system must integrate and be consistent with specific
5 policies in the Delta Vision. In particular, these strategic
6 investments must strengthen selected levees, improve floodplain
7 management, and improve water circulation and quality.

8 (g) The current boundaries and governance system of the Delta
9 must be changed. It is essential to have an independent body with
10 authority to achieve the goals of ecosystem revitalization and
11 adequate water supply for California, while also recognizing the
12 importance of the Delta as a unique and valued area. This body
13 must have secure funding and the ability to approve spending,
14 planning, and water export levels.

15 (h) Discouraging inappropriate urbanization of the Delta is
16 critical both to preserve the Delta's unique character and to ensure
17 adequate public safety.

18 (i) Institutions and policies for the Delta should be designed for
19 resiliency and adaptation.

20 27001. The Legislature finds and declares that the Delta is in
21 crisis and existing Delta policies are not sustainable in the long
22 term, particularly in light of the threat of climate change and sea
23 level rise to state water supplies and water availability. Protecting
24 the public trust and improving the stewardship of the precious
25 resources of the Delta require fundamental reorganization of the
26 state's management of those resources.

27 27002. The Legislature finds and declares all of the following:

28 (a) Before California's statehood, the Delta had developed over
29 millions of years of sedimentary deposits from California's two
30 great rivers. When European settlers arrived, the Delta was a
31 shallow wetland with water covering the area for many months of
32 the year. Natural levees, created by deposits of sediment, allowed
33 some islands to emerge during the dry summer months. As with
34 other river estuaries, salinity would fluctuate, depending on the
35 season and the amount of precipitation in any one year.

36 (b) Not long after statehood, settlers began building larger levees
37 to keep water off certain islands for the entire year. In this way,
38 they gained a property interest in the created island. Into the 20th
39 century, numerous islands and a maze of Delta channels emerged,
40 along with a robust agricultural economy relying on the fertile peat

1 soils that had been deposited over millions of years. Cultivation
2 of these peat soils, however, caused oxidation and subsidence,
3 leading to some areas of the Delta lying as deep as 30 feet below
4 the adjacent water level.

5 (c) In 1933, the Legislature adopted the California Water Plan,
6 which envisioned a set of northern California reservoirs to hold
7 water in the Sacramento River watershed for subsequent transfer
8 across the Delta into the San Joaquin Valley. The 1933 plan also
9 envisioned a reservoir on the main stem of the San Joaquin River,
10 which would hold back water that otherwise flowed to the Delta
11 and transfer that water south into the Tulare Lake and Kern River
12 basins. Because California did not have the resources to finance
13 the plan at that time, the federal government agreed to implement
14 the plan through the United States Bureau of Reclamation, which
15 constructed the Central Valley Project.

16 (d) In 1959, the Legislature approved construction of a State
17 Water Project, again drawing water from a northern California
18 reservoir across the Delta to serve agricultural uses in the Tulare
19 Lake and Kern River basins as well as urban uses in southern
20 California and the San Francisco Bay area. In 1960, California
21 voters approved the issuance of one billion seven hundred fifty
22 million dollars (\$1,750,000,000) in bonds to pay for the State
23 Water Project, which began exporting water from the Delta in
24 1968.

25 27003. The Legislature finds and declares all of the following:

26 (a) As demands on the Delta's resources have expanded, the
27 Delta has suffered conflict and deterioration. As water quality and
28 fishery have declined, litigation over water quality standards and
29 fishery protection has raged for several decades, ultimately leading
30 to a 1994 agreement between the state and the federal government
31 on Delta water quality standards. Thereafter, the two governments
32 developed the CALFED Bay-Delta Program to improve conditions
33 for four critical issues: water supply, ecosystem restoration, water
34 quality, and levee system integrity. The two governments signed
35 a Record of Decision to establish a 30-year Delta improvement
36 program on August 28, 2000.

37 (b) Since the 2000 CALFED Record of Decision, water project
38 pumping has increased to record high levels and certain fish
39 populations have declined to record low levels, with the Delta
40 smelt approaching extinction. Studies of the Delta's ecosystem

1 crisis have indicated that the recent decline has been caused by
2 three categories of problems for the Delta: water project operations,
3 toxic contaminants, and invasive species. All three of these
4 categories of problems have worsened in recent years, arising out
5 of the growth and development of the Central Valley economy.

6 (c) Recent years also have demonstrated the fragility of the
7 Delta levee system. After a 2004 levee failure on a clear summer
8 day, not during a flood event, the state has focused increased
9 attention on the conditions of the Delta's levees, which are mostly
10 owned by private parties or local reclamation districts. Continued
11 farming on peat soils has led to greater subsidence to levels far
12 below adjacent water levels in some parts of the Delta. These
13 conditions put greater hydraulic pressure on Delta levees and
14 increase the risk of levee failure. The Department of Water
15 Resources has identified a possible risk scenario where an
16 earthquake could lead to mass levee failure and the creation of a
17 deep, saline water body where deeply subsided islands formerly
18 stood. This type of mass levee failure would interrupt water exports
19 from the Delta, as saline water approached the water project
20 pumping facilities in the south Delta.

21 (d) Finally, increasing urbanization on the fringes of the Delta
22 has led to greater stress on the Delta's resources. In 1992, the
23 Legislature passed the Delta Protection Act of 1992 (Division 19.5
24 (commencing with Section 29700)), which established a primary
25 zone where further development is barred and a secondary zone
26 surrounding the Delta where development may proceed under
27 certain conditions. The Delta Protection Commission, created by
28 the Delta Protection Act of 1992, has succeeded in large part due
29 to the leadership of local officials who represent those who live
30 and work in the Delta.

31 CHAPTER 2. DEFINITIONS

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34 27050. Unless the context otherwise requires, the definitions
35 set forth in this chapter govern the construction of this division.

36 27052. "Commission" means the Delta Protection Commission
37 established in the Delta Protection Act of 1992 (Division 19.5
38 (commencing with Section 29700)).

39 27054. "Council" means the Delta Stewardship Council
40 established in Chapter 3 (commencing with Section 27100).

1 27056. “Delta” means the Sacramento-San Joaquin Delta
2 estuary, as defined in Section 12220 of the Water Code.

3 27058. “Delta Vision” means the report titled “Delta Vision:
4 Our Vision for the California Delta” as adopted by the Blue Ribbon
5 Task Force on November 30, 2007.

6 27060. “Plan” means the Delta Stewardship Plan adopted
7 pursuant to Chapter 5 (commencing with Section 27300).

8 27062. “State Water Project” means the State Water Resources
9 Development System.

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11 CHAPTER 3. DELTA STEWARDSHIP COUNCIL
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13 27100. (a) There is hereby created the Delta Stewardship
14 Council in the Natural Resources Agency, consisting of nine
15 members. Eight members shall be appointed by the Governor,
16 subject to Senate confirmation, and shall have the responsibility
17 for the stewardship of the Sacramento-San Joaquin Delta and all
18 its natural resources. It is the intent of the Legislature that the
19 membership include diverse expertise and perspectives, policy and
20 resource experts, strategic problem solvers, and individuals having
21 successfully resolved multi-interest conflicts. One member shall
22 be the chairperson of the Delta Protection Commission.

23 (b) The council shall do all of the following:

24 (1) Approve the Delta Stewardship Plan.

25 (2) Determine appeals from Delta Protection Commission water
26 supply decisions of whether a project proposed by or approved by
27 a state agency or local government that may impact the Delta is
28 consistent with the plan.

29 (3) Assume responsibility for any conservation or habitat
30 management plan developed for the Delta by the state or federal
31 government.

32 (4) Establish a process to ensure federal and state consistency
33 with the plan.

34 (5) Review, and determine consistency with this division of;
35 the Bay Delta Conservation Plan or an environmental impact report
36 for any significant Delta conveyance facility.

37 (6) Be designated a trustee agency pursuant to the California
38 Environmental Quality Act (Division 13 (commencing with Section
39 21000)).

(7) Determine the consistency of major water, road, railroad, utility, and levee infrastructure projects in the Delta with the plan and communicate that determination to the responsible agencies.

(8) Assess policies applied outside the Delta that are critical to meeting Delta Vision goals and convey the results of that assessment to the responsible agency.

(9) Work with the Delta Science and Engineering Program and the Delta Science and Engineering Board on adopting sound principles of adaptive management.

(10) Receive and allocate funds to advance policies and programs related to the Delta.

(11) Include issues of environmental justice in the plan and in future Delta decisionmaking.

(12) Adopt procedures for use of alternative approaches to dispute resolution, such as joint fact finding and arbitration to reduce reliance on litigation and the courts.

(13) Have the power to sue to ensure compliance with the plan.

(14) Establish policies and procedures that ensure that day-to-day operation of water export systems is consistent with the plan.

27101. Each member shall serve for five years. The length of the initial terms of office shall be staggered.

CHAPTER 4. DELTA SCIENCE AND ENGINEERING PROGRAM

27200. (a) The Legislature finds and declares that California should maintain a strong and consistent investment in science and engineering important to the Delta. There should be a more direct link between scientific investigation and real-world management and policy. To achieve this, the council will need both a permanent science and engineering staff and an independent Delta Science and Engineering Board that reviews council actions.

(b) It is the intent of the Legislature that the Delta Science and Engineering Program should be a replacement for, and a successor to, the successful CALFED Science Program, and that the Delta Science and Engineering Board should be a replacement for the CALFED Independent Science Board.

(c) The council, by March 1, 2010, shall appoint a Delta Science and Engineering Board, consisting of between 12 and 20 individuals with natural science, social science, engineering, and

1 policy expertise. Members may serve a maximum of two five-year
2 terms. Lead scientists appointed by the council shall have a rotating
3 appointment of three years. Lead scientists shall be formally
4 engaged by an agency other than the state.

5 (d) The council, by March 1, 2010, shall create a Delta Science
6 and Engineering Program.

7 (e) It is the intent of the Legislature that the program do all of
8 the following:

9 (1) Research critical scientific issues of both the physical Delta
10 and elsewhere in the state relevant to Delta management.

11 (2) Organize, assess, and synthesize the best available science
12 for policymakers and the council.

13 (3) Review all major projects undertaken to advance the goals
14 of the Delta Vision.

15 (4) Conduct independent science and engineering reviews of
16 the work of government agencies or consultant work upon the
17 request of the council, the conservancy, or other state agencies.

18 (5) Establish communication channels to effectively transmit
19 science and engineering results to broader and more diverse
20 audiences.

21 (6) Develop discussion papers and interactive lectures.

22 CHAPTER 5. DELTA STEWARDSHIP PLAN

23 27300. The Legislature finds and declares all of the following:

24 (a) The Delta Stewardship Plan is intended to guide and shape
25 management of the Delta to ensure its revitalization and create a
26 statewide reliable water delivery system.

27 (b) The current lack of a legally binding, cohesive plan has
28 caused agencies and Delta stakeholders to work in a vacuum,
29 developing policies and programs that lack context. The CALFED
30 Record of Decision included most elements of such a plan but
31 failed to be implemented for three reasons: those in charge had no
32 authority to ensure its implementation, those who were
33 implementing it had no accountability, and, in the end, there was
34 no money.

35 (c) In addition, all parties recognize that the management of the
36 Delta is rife with uncertainty. Any functional governance structure
37 must be flexible and adaptable to changing circumstances. A
38 governance structure built around a plan can achieve this flexibility
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1 by incorporating periodic revisions and grounding management
2 directions in adaptive management principles. Importantly,
3 management and scientific understanding must evolve together.
4 Management decisions and plan provisions must incorporate the
5 best available science, and be formulated in such a way that
6 scientific knowledge can be generated through direct observation
7 of the Delta's response to various actions.

8 (d) The plan is intended to achieve the primary goals of the
9 Delta Vision. It should build upon and integrate other plans,
10 including the Delta Protection Commission ~~Resources Management~~
11 ~~Plan~~ *resource management plan* and the Central Valley Flood
12 Protection Plan, modifying and extending them as needed to meet
13 its responsibilities.

14 (e) Existing policies and programs in the Delta lack cohesion
15 and integration. The aim of this proposed plan is to remedy those
16 two faults. The plan should be developed and adopted by the
17 council before January 1, 2011.

18 (f) All state, regional, and local agencies with planning
19 responsibilities should be required to carry out their actions in
20 conformity with the plan, while providing the flexibility needed
21 to meet the Delta's management challenges. Approving a plan
22 governing the Delta thereby ensures consistency among existing
23 federal, state, regional, and local agencies and provides the
24 flexibility needed to meet the Delta's management challenges.

25 (g) Local governments and other state and federal agencies
26 should continue planning, decisionmaking, and operations
27 consistent with the plan.

28 27301. The Legislature further finds and declares that the plan
29 should do all of the following:

30 (a) Incorporate any species protection requirements that impact
31 Delta resources.

32 (b) Incorporate requirements for water flow and water quality
33 in the Delta that achieve the ~~ecological~~ *primary* goals.

34 (c) Define state land use interests in the Delta, especially those
35 that impact the ecosystem, water supply reliability, and flood
36 concerns. The commission and local governments should provide
37 the oversight to protect those interests consistent with the plan. In
38 the case that these state interests extend from the Delta into
39 adjacent areas, the commission should work with relevant local
40 governments to address the linkages.

1 (d) Provide principles and procedures for adaptive management.

2 (e) Provide for the modeling, data collection, management,
3 monitoring, analysis, and interpretation to support policy
4 decisionmaking.

5 (f) Ensure flexibility and resiliency in managing the Delta.

6 (g) Incorporate the recommendations of the Delta Vision
7 Strategic Plan.

8 (h) Include an accurate up-to-date assessment of water supply
9 availability.

10 (i) Articulate a detailed financing plan that identifies costs,
11 benefits, and revenue sources.

12 (j) Serve as a foundational document for a programmatic
13 environmental impact statement or environmental impact report,
14 as well as any projects undertaken requiring permits pursuant to
15 the California Environmental Quality Act (Division 13
16 commencing with Section 21000)) or the federal National
17 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

18 27302. (a) The commission shall do all of the following:

19 (1) Identify and address, by December 31, 2010, any
20 inconsistencies in the water quality plans adopted by the State
21 Water Resources Control Board and the plan.

22 (2) Present the council with a draft plan no later than October
23 1, 2010.

24 (b) The council shall review, and, if necessary, amend the plan
25 at least every five years.

26 (c) The Delta Science and Engineering Board, with the support
27 of the Delta Science and Engineering Program, shall develop a
28 science-based adaptive management program to provide for
29 continued study of, and adaptation to, actions implemented by
30 federal, state, and local agencies in the Delta.

31 27303. The commission shall develop the plan in accordance
32 with all of the following:

33 (a) The plan shall be consistent with the procedural and
34 substantive requirements of the federal Coastal Zone Management
35 Act of 1972 (16 U.S.C. Sec. 1451 et seq.).

36 (b) The commission shall coordinate with stakeholders as well
37 as federal, state, and local agencies.

38 (c) The plan shall be based on the Delta Protection Commission
39 ~~Resources Management Plan~~ *resource management plan*, the

1 Central Valley Flood Protection Plan, and any other water supply
2 and species protection plans it determines as foundational.

3 (d) The commission shall encourage the participation of federal,
4 state, and local agencies to help to better integrate their
5 responsibilities and capacities into the plan.

6 (e) The commission shall ensure that the plan recognizes and
7 addresses the uncertainty involved in Delta decisionmaking and
8 design an adaptive management plan to ensure that ongoing Delta
9 management builds knowledge about the ecosystem and provides
10 information for improved decisionmaking. The adaptive
11 management plan should build upon the work of the CALFED
12 Science Program to do all of the following:

13 (1) Synthesize existing knowledge about the Delta as a physical
14 system.

15 (2) State hypotheses about the effects of management actions
16 recommended in the plan on the ecosystem, water supply, and
17 other values.

18 (3) Recommend to the council additional management actions
19 expected to yield desired ecosystem or water supply outcomes or
20 designed to generate useful knowledge about the Delta.

21 (4) Design monitoring programs to systematically gather needed
22 data.

23 (5) Identify and put in place the processes by which the data
24 will be synthesized, hypotheses evaluated, and new management
25 actions recommended.

26 (6) On the five-year cycles on which the plan is reviewed and
27 updated, the results should be integrated into a report on the
28 knowledge of the Delta, an assessment of the success of current
29 policies and management, and the identification, assessment, and
30 recommendation of possible changes in policies or management.

31 (7) Beginning with the first five-year update, the council shall
32 consider water rights decisions made by the State Water Resources
33 Control Board to achieve an accurate accounting of the actual
34 water in the Delta.

35 27304. (a) The council shall adopt the plan on or before
36 January 1, 2011.

37 (b) Until the plan is adopted pursuant to this division, the Delta
38 Vision-strategic plan *Strategic Plan* shall serve as the interim plan
39 for the Delta.

CHAPTER 6. DELTA STEWARDSHIP FUND

27400. The Delta Stewardship Fund is hereby created in the State Treasury. The commission shall deposit in the fund any moneys received from federal, state, local, and private sources for Delta stewardship. Moneys in the fund shall be available, upon appropriation by the Legislature, for regional economic development consistent with the plan.

SEC. 2. Section 29735.5 is added to the Public Resources Code, to read:

29735.5. The commission shall request federal agencies, including, but not limited to, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the United States Bureau of Reclamation to participate in nonvoting liaison capacities with the commission to better assess and coordinate flood protection, water supply, and ecosystem protection issues.

SEC. 3. Section 29759 is added to the Public Resources Code, to read:

29759. (a) The commission shall require all general plans of cities and counties within the Delta, and the resource management plan, to be consistent with the Delta Stewardship Plan adopted pursuant to Division 17.5 (commencing with Section 27000).

(b) The commission shall do all of the following:

(1) Revise all of its plans and policies, including the resource management plan, to be consistent with the Delta Stewardship Plan adopted pursuant to Division 17.5 (commencing with Section 27000).

(2) Review and certify all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan.

~~(3) Exercise direct consistency determination authority over development proposals in the primary zone. The commission shall make an affirmative determination that any project approved by a city or county within the primary zone is consistent with the resource management plan and the Delta Stewardship Plan.~~

(3) Exercise appeal authority, pursuant to Chapter 6 (commencing with Section 29770) of Division 19.5, over actions taken by a local government or other local agency in the primary zone. Notwithstanding Section 29771, the commission shall deny

1 *the appeal if the commission finds, based on substantial evidence*
2 *in the record, that the action is consistent with both the resource*
3 *management plan and the Delta Stewardship Plan. If the*
4 *commission does not make that finding, the commission shall*
5 *remand the action to the local government or local agency for*
6 *reconsideration. Upon remand, the local government or local*
7 *agency shall modify the appealed action and resubmit the matter*
8 *for review to the commission. A proposed action appealed to the*
9 *commission shall not be effective until the commission makes the*
10 *findings required by this subdivision and Section 29771.*

11 (4) Review, hold public hearings and receive testimony, and
12 provide recommendations to the Delta Stewardship Council on all
13 proposed projects subject to approval by that council.

14 (5) Develop a Delta regional economic development plan to
15 support increased investment in agriculture, recreation, tourism,
16 and local communities.

17 (6) Review for consistency any water conveyance or storage
18 project proposal. Any of ~~there~~ *these* decisions may be appealed to
19 the council within 30 days of action taken.

20 SEC. 4. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.